

STUDENT IDENTIFICATION NO



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MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 3, 2022/2023

ULB2612 – LABOUR LAW

(All Sections/Group)

02 OCTOBER 2023

Reading Time : 9.00 a.m. – 9.15 a.m.
(15 Minutes)

Answering Time: 9.15 a.m. – 12.15 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENTS

1. Students will have **fifteen minutes** during which they read the paper and make rough notes **ONLY** on their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.
2. This Question paper consists of 4 Pages and 4 Questions only.
3. This Question paper consists of 2 sections. Attempt **ALL** questions in Section A and answer only **ONE** question in **Section B**. All questions carry equal marks and the distribution of the marks for each question is given.
4. Students are allowed to bring into the examination hall **CLEAN** and **ORIGINAL** copy of:
 - i. Employment Act 1955 (Act 265)
 - ii. Industrial Relations Act 1967
 - iii. Trade Union Act 1959

“Clean” is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

SECTION A: ANSWER ALL QUESTIONS

- a. Leon received a letter offer to work at Sunrise Resort in Melaka as a security guard with a salary of RM1,500. He also received overtime because the Resort will open until midnight during the school holidays. During public holidays, he will take the leave alternately with another staff. During the first day of hari raya, he was requested to work although he has been given leave for the hari raya.

When he received his slip for his salary, there is no payment for overtime and working during public holiday. The company claimed that as the security guard his nature of working requires him to be standby. Advise Leon.

(10 marks)

- b. Roy is Rossa's husband and he applied for paternity leave when Rossa was admitted in a hospital to give birth of their baby. Roy's application for paternity leave was declined by his company with the reason the company is short of staff.

On 1 January 2020, Rossa was told she would be reporting in Melaka. She informed her employer that she was pregnant after two months of working. In May 2020, she gave birth to her first baby and she was on maternity leave. The company is not satisfied as she just started working in January 2020. The company refused to provide her with her salary and maternity allowances during her maternity leave. Please advise Roy and Rossa with reference to Malaysian Labour Law.

(15 marks)

(Total:25 marks)

QUESTION 2

Ms Megan commenced employment with Bulan Matahari Sdn Bhd ("the Company") on 1 April 2019 in the Human Resource Department. One of the job scopes for Ms Megan is to handle matters relating to the recruitment of new staff. Ms Megan decided to propose Ms Maggie as the new staff for the position of clerk. However, she did not inform the company that Ms. Maggie is her niece. In early June 2022, Mr Raymond, the general manager accused Ms Megan of not disclosing the information regarding her niece and supplying confidential information for a project to Syarikat Tipu Sdn Bhd. Ms Megan denied the allegations.

Ms Megan was given a show cause letter dated 1 July 2022. The show cause letter did not provide any information such as the date, time and location of the incident. Ms Megan provided her explanation to the show cause letter vide her letter dated 5 July 2022, wherein she had raised the issue pertaining to the supplying confidential informations to Syarikat Tipu Sdn Bhd.

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The Company proceeded to issue to the Claimant a Notice of Domestic Inquiry vide letter dated 15 July 2022 wherein 3 charges were laid down against Ms Megan.

FIRST CHARGE:

That you as the Assistant Manager failed to disclose that Ms Maggie has a relationship with her. That you have a duty to disclose this information but you have failed to disclose. You have therefore breached the Company's Code of Conduct for employees of the Company.

SECOND CHARGE:

That you as an Assistant Manager of the Company had received RM5,000 deposited in your bank in your CIMB account no. 1050436600 on 18 June 2022. The money was deposited by one of the staff of Syarikat Tipu Sdn. Bhd. You have therefore breached the Company's Code of Conduct for employees of the Company

THIRD CHARGE:

That you as an Assistant Manager in Human Resource Department in our Company had sometime in May 2022 informed an employee from Syarikat Tipu Sdn Bhd confidential documents of our document for a project in Gambang Kuantan. You have therefore breached the Company's Code of Conduct on 'Breach of Trust and Confidence' and 'Abuse of Power/Missuse of Position' (page 3 and 4 of the Code of Conduct for employees of the Company).

Ms Megan attended the domestic inquiry on 18 July 2022 despite the Notice of Domestic Inquiry dated 15 July 2022 was given to her only on 16 July 2022. Ms Rose merely had two days to prepare for the domestic inquiry. During the domestic inquiry, one of the panels of the domestic inquiry was Mr Raymond who alleged that Ms Megan had committed a wrong against the company. In addition, the identity of the worker of Syarikat Tipu Sdn Bhd was not disclosed to Ms Megan, neither was the worker of Syarikat Tipu Sdn Bhd called to testify at the said domestic inquiry. Further, Ms Megan did not have the opportunity to peruse the documents by the company for the the domestic inquiry.

Ms Megan was then terminated from her services by the Company vide a letter dated 21 July 2022. Advise Ms Megan whether any action can be taken against the Company under the Malaysian Labour law.

(Total: 25 marks)

Continued...

QUESTION 3

Union for Transportation Workers ('the Union') received recognition from Kuat Trasportation Sdn Bhd ('the Company') to represent their employees. The Union sent an invitation to commence a collective bargaining. On 9 November 2021, the Company offered to pay the Union members their contractual annual bonus provided that they forego their contractual claim for annual increments.

In a letter dated 21 November 2021, the Union rejected the Company's offer and requested the Company to pay the Union's members their contractual annual bonus for the year 2021 by 30 January 2022, failing which it will have no alternative but to hold picketing actions on 3 February 2022. In a letter dated 23 January 2022, the Company alleged that the proposed picketing will be unlawful. In a letter dated 25 January 2022, the Union informed the Company that the proposed picketing is lawful and will proceed to picket as scheduled if the Company failed to pay the defendant's members their contractual annual bonus.

- a. Advise on the procedure of collective agreement if the Union wants to proceed with collective agreement with the Company.

(10 marks)

- b. Advise the Company whether the action of picketing is possible against them and further action that can be taken by the Company if any.

(15 marks)

(Total: 25 marks)

SECTION B ANSWER EITHER QUESTION 4(a) or 4(b)**QUESTION 4(a)**

'It is to be observed that the relationship of master and servant is characterised by a contract of service, express or implied, between the master and the servant. A contract of service is to be distinguished from a contract for services because a person who contracts to provide services for another person is not a servant but an independent contractor. To distinguish between an independent contractor and a servant, the generally accepted test is whether the employer retains the power, not only of directing what work is to be done, but also of controlling the manner of doing the work'

Mary Colete John v South East Asia Insurance Bhd [2010] 2 MLJ 222

Based on the above statement, critically explain the tests applied by the courts in distinguishing the contract of service and the contract for service.

(Total: 25 marks)

or

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Question 4(b)

Trade Union is defined as any association or combination of workmen or employers, being workmen, whose place of work is in Malaysia. In Malaysia, the Federal Constitution protects the worker's enjoyment as to freedom of association, in particular, the right to form and join the trade union. However, due to threat to national security purposes, various restrictions have been imposed on trade union activities..

Explain in detail the process and procedures of Trade Union registration and the various restrictions. Cite relevant statutory provision and case law in your answer.

(25 Marks)

End of page.